**S.B.Civil Sales Tax Revision Petition No.41/2000**
**CTO,Bhilwara vs. M/s Abhey Udhyog**

Date of Order: 29.8.2006.

**HON'BLE MR. PRAKASH TATIA, J.**

Mr. Sangeet Lodha for the petitioner.
None present for the respondent despite service.

Heard learned counsel for the petitioner, as no body appears on behalf of the respondent despite service.

Brief facts of the case are that the assessing authority conducted a survey on 8.5.1990 at the place of business of the respondent. At the time of survey, one diary was found and thereafter books of accounts and other registers were scrutinized. It was found that the entries which were made in the diary, were not entered into the accounts books and no stock register was prepared. According to the department, 245 bags of oil coke were there but only 65 bags of oil coke were entered in the accounts books and there was no valid explanation with regard to 180 bags. It is the case of the department that the assessee kept the diary wherein he gave mention of 180 bags, therefore, there was difference between the stock found and entries made in the diary as well as in the accounts books. According to the department, the assessee was given show cause notice to explain with regard to such gross illegality committed by him. After hearing the arguments, assessment was made

and the penalty and interest were imposed upon the assessee vide assessment order dated 30.10.1990 to the tune of Rs.14,500/- under Section 16(1)(i) (n) and 11B of the Sales Tax Act.

The assessee preferred appeal against the said order dated 30.10.1990. The Deputy Commissioner(Appeals),Commercial Taxes, Udaipur held that no detail enquiry was conducted by the assessing authority and the assessing authority merely on the basis of the quantity of the raw material, assessed the end-product. The appellate authority did not accept the contention of the revenue that the assessee failed to give reasonable explanation with respect to 180 bags of oil coke.

The appellate authority quashed the penalty imposed upon the assessee on the quantity of oil and raw material. The appellate authority held that such penalty cannot be levied without proving sale of the final product. The order of appellate authority dated 16.3.1991 was challenged by preferring appeal before the Tax Board under Section 85 of the Rajasthan Sales Tax Act. The Tax Board dismissed the appeal of the revenue vide order dated 12.7.1999. Hence this revision petition.

While admitting the revision petition, following substantial questions of laws were framed by this Court on 8.3.2000:-

> "(1) Whether the penalty under Section 16(1) can be imposed against the Assessee, if the assessee fails to maintain the stock Registers of the raw material and the other material produced by the assessee?

(2) Whether the maintenance of Daily Stock Diary is a substitute of Stock Register and whether on the basis of the entries made in the Daily Stock Diary, the calculation and computation of the quantity of Oil Coke, Mustard and Tilhan, can be rightly and properly ascertained."

So far as legal position is concerned, the penalty can be imposed under Section 16(1) of the Act if the assessee failed to maintain the stock register of the raw material and other material produced by the assessee. But here in this case, the decisions of the first appellate court as well as the Tax Bord are based upon the question of fact on the basis of totality of the circumstances. The appellate authority as well as the Tax Board opined that merely because of availability of one diary containing certain figures with respect to filling up of the gunny bags with the waste, of the oil coke, the sale of oil cannot be presumed. Both the authorities were of the view that the assessing authority did not enquire into the matter thoroughly and drawn presumption on the basis of certain figure given in the diary of the assessee.

It will be relevant to mention here that the notice was issued to the assessee because of the reason that the account for 245 bags of the oil coke was not given in the account books maintained by the assessee. The assessing authority itself accepted the explanation given by the assessee with respect to the 65 bags of the oil coke. The appellate authority held that since the assessee failed to give reasonable

explanation with respect to loading and unloading of 180 bags of oil coke, therefore, the imposition of the tax on said basis appears to be correct. So far as presumption drawn by the assessing authority of manufacturing oil is concerned, that was wrongly drawn, as in support of said presumption there was no material before the assessing authority. In view of the above, even after holding that in a proved case under Section 16(1), the penalty can be imposed but in the facts of this case, no case is made out for imposition of penalty. In the facts of this case, merely on the basis of entries found in the diary of the assessee, without further enquiry, the assessing authority committed error of fact in imposing the tax on the end-product.

In view of the above discussion, I do not find any merit in this revision petition. Hence the revision petition is dismissed.

**( PRAKASH TATIA ),J.**

mlt.